

# Connery Associates

November 9, 2004

Memorandum

To: Chatham Planning Board

Fr: John Connery

Re: Non-conforming “questions” to help guide discussion

I have used the format of the June 25th draft regarding non-conforming uses to organize the questions. My intention is to follow the draft as we present the questions for discussion and decision. ***I am also re forwarding the non-conforming text of June 25th since the items below reference said document. Please note the memo of June 25<sup>th</sup> is organized for ease of review and discussion it does not represent the final formatting***

The questions below are intended to *initiate* and focus discussion on specific portions of the non-conformance policies of the Town; they are not intended as the only questions that could or should be addressed for each specific issue but represent the issues discussed in our June meetings. The entire memo of June 25<sup>th</sup> is obviously open for discussion; the sections noted below highlight the main points of discussion at our June meetings on Non-conforming.

## **Section 2.1.1 Non-Conforming Single and Two Family Residential Structures**

- Does the Planning Board want to restrict the Zoning Board of Appeals (ZBA) authority such that reconstruction of one and two family homes can only occur on the current footprint? Or does the Planning Board want to continue the existing policy of allowing the ZBA to grant a special permit for reconstruction with conditions on a case by case basis? Both approaches are legal under Massachusetts law.

## **Section 2.1.4 Non-Conformity Due to Public Taking**

- Does the Planning Board want to remove some or all current protections for said lots? Said lots are now considered as “pre-existing non conforming lots” provided that said lots were buildable prior to any public taking.

## **Section 3.0 Non-conforming Uses**

- Should the Planning Board amend the zoning bylaw to restrict ZBA authority such that non-conforming uses can only be changed to conforming uses consistent

with district where they are situated? Or does the Planning Board want to maintain the ZBA current authority allowing changes from one non-conforming use to another given a finding that the proposed use is not substantially more detrimental? Both approaches are legal under Massachusetts law.

#### **Section 4.0 Non-Conforming Structures (Dimensional Non-conformity)**

- Does the Planning Board want to eliminate the current policy regarding non-conforming structures (dimensional non-conformance for other than one and two family homes) that allows changes to existing non-conforming buildings if the ZBA finds that said changes are substantially not more detrimental? Or does the Planning Board want to establish limits to alteration and expansion allowed by a special permit, such as limiting the total area of the expansion to a percentage of the current building?

#### **Section 4.1 Minor Alteration**

- Does the Planning Board want to maintain the current policy of requiring a ZBA special permit for all changes to non-conforming structures regardless of scale and even if the proposed expansion is consistent the current setback and/or other dimensional controls? Or does the Planning Board want to consider adopting a minor alteration provision with some level of exemption? Both approaches are legal.

#### **Section 5.0 Board of Appeals Criteria**

- Does the Planning Board want to make alterations, deletions or clarifications to any of the listed criteria?

#### **Section 6.0 Variance Required**

- Does the Planning Board agree with the proposed section 6.0 that states that increasing an existing dimensional non-conformity, or the creation of a new dimensional non-conformity requires a variance and not a special permit? Does the Planning Board want to provide guidelines for said action?

#### **Section 8.0 Reconstruction after Catastrophe**

- Does the Planning Board want to restrict the reconstruction of non conforming structures after catastrophe to only the existing footprint and preclude the option of alterations as part a ZBA special permit?

